

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Samuel Bourne,
Plaintiff

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v.

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12-cv-251-PB

State of New Hampshire, Supreme
Court of New Hampshire, Linda
Dalianis, James Duggan, Gary Hicks,
Carol Ann Conboy, Robert Lynn
and Eileen Fox,
Defendants

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OBJECTION TO MOTION TO STAY

The Defendant(s), State of New Hampshire, Supreme Court of New Hampshire, Honorable Linda Dalianis, Honorable James Duggan, Honorable Gary Hicks, Honorable Carol Ann Conboy, Honorable Robert Lynn and Eileen Fox, Supreme Court Clerk, by and through counsel, the Office of the Attorney General object to plaintiff's motion to stay as follows.

1. Defendants have filed an objection to plaintiff's motion to recuse and change venue. (ECF Doc. # 5). For the reasons stated in the objection to the motion to recuse, which are incorporated herein by reference, defendants submit that there is no reason for recusal or change of venue and the request for stay should also be denied.

2. Although the motion to recuse has not been ruled on, Judge Laplante has recused himself and the case has been reassigned to Judge Barbadoro.

3. Defense counsel has not received any appellate filing in this case. Therefore at best, plaintiff is seeking a stay in anticipation of a writ of mandate to the First Circuit that has not been filed. Since even interlocutory appeals do not

automatically stay the proceeding in the district court, it makes no sense that the threat of a writ of mandate that has not yet been filed could do so. 28 U.S.C. §1292(b).

4. Granting or denying a request to stay is within the court's discretion. *See Diomed, Inc. v. Total Vein Solutions, LLC*, 498 F. Supp. 2d 385, 387 (D. Mass. 2007) citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The factors that courts generally find persuasive include conserving judicial and party time, resources, and energy. *Diomed, Id.* Given the highly questionable likelihood of success of plaintiff's threatened writ of mandate, none of those factors apply. Instead, a stay would only unnecessarily and unreasonably prolong this matter.

5. Further, in this case, as in *Diomed*, no other arguments justifying a stay are present. *Id.* at 388. (Issues of particular "public moment" that will affect society or law in general may justify stay). "[T]he party requesting the stay must show that they will suffer hardship if the stay is not granted." *Rivera v. P.R. Tel. Co.*, 2009 U.S. Dist. LEXIS 92101 (quoting *Landis*, 299 U.S. 248, 255, (1936))." *Solis-Alarcon v. Abreu-Lara*, 722 F. Supp. 2d 157, 161 (D.P.R. 2010). Plaintiff has not demonstrated hardship here and the request should be denied.

6. No memorandum of law is submitted as this motion is within the discretion of the court and the relevant authority is cited herein.

WHEREFORE, it is respectfully requested that the plaintiff's motion for a stay be denied.

Respectfully submitted,

STATE OF NEW HAMPSHIRE, N.H.
SUPREME COURT, HONORABLE
LINDA DALIANIS, HONORABLE
JAMES DUGGAN, HONORABLE GARY
HICKS, HONORABLE CAROL ANN
CONBOY, HONORABLE ROBERT
LYNN AND EILEEN FOX, SUPREME
COURT CLERK

By their attorney,

MICHAEL A. DELANEY
ATTORNEY GENERAL

Date: September 4, 2012

/s/ Nancy J. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following persons on this date and in the manner specified herein: Conventionally served by first class mail to Samuel Bourne, pro se, 117 Pond Street, East Bridgewater, MA 02333.

Date: September 4, 2012

/s/ Nancy J. Smith
Nancy J. Smith
NH Bar # 9085

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